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August 6, 2010

Via ECFS

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street S.W.
Washington, D.C. 20554

**Re: *Ex Parte* Notice - Request by U.S. TelePacific Corp. d/b/a TelePacific
Communications for Review and Reversal of Universal Service
Administrator Decision, WC 06-122**

Dear Ms. Dortch:

The undersigned and Denise N. Smith, both counsel to the Coalition for Fairness and Restraint in USAC Fund Administration (the "Coalition") met yesterday, August 5, 2010, with Claudia Fox, Lisa Gelb, Nicholas Degani, Carol Pomponio and Vickie Robinson, all of the Wireline Competition Bureau regarding the above-referenced matter and the subsequent Petition for Clarification or in the Alternative for Partial Reconsideration ("ILEC Petition") filed by several incumbent local exchange carriers ("ILECs") on June 1, 2010.

During the meeting, we made remarks consistent with statements made in prior comments and *ex partes* filed by the Coalition in the above-captioned proceeding. In response to questioning, we discussed whether the manner in which a carrier decides to offer its wireline broadband Internet access services ("BIAS") impacts the carrier's obligation to contribute to the universal service fund ("USF"). FCC Staff commented that many rural incumbent local exchange carriers ("RLECs") offer the transmission component of their wireline BIAS to end users on a common carriage basis and collect USF surcharges from those end users. We asserted that the *Wireline Broadband Order* makes clear that RLECs – and competitive local exchange carriers ("CLECs") for that matter, are free to make that choice.¹ Whether a CLEC chooses to offer the transmission component of its wireline BIAS on a common carriage basis or as part of an integrated service is a choice a CLEC may elect to make for any number of reasons. We

¹

In re Appropriate Framework for Broadband Access to the Internet over Wireline Facilities, 20 FCC Rcd 14853, ¶ 89 (2005) ("*Wireline Broadband Order*").

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emphasized that a CLEC that chooses to offer wireline BIAS on an integrated basis is not required to contribute to the USF directly or indirectly based on revenues from that product.

We further explained, consistent with prior Coalition submissions in this docket, that CLECs are not required to contribute to the USF indirectly on the special access inputs used for wireline BIAS because such inputs typically are purchased under a reseller certification resulting in the associated revenues properly being classified as carrier's carrier revenues. We explained that, while the particular facts relating to such certificates may vary depending on the carriers involved, such certificates commonly are provided on an entity-wide basis.² In providing such a certificate, a CLEC properly certifies that the services purchased will be resold in the form of "U.S. telecommunications" and that the CLEC contributes directly to the USF as required. In the case of special access T1s used for wireline BIAS, the *Wireline Broadband Order* makes clear that no USF contribution is required on wireline BIAS revenues.³

We also commented, consistent with prior Coalition comments, that wholesalers should be able to rely on reseller certifications when reporting and determining USF contribution obligations.⁴ However, we underscored the Coalition's opposition to the ILEC Petitioners' suggestion that the Commission and/or USAC could seek contributions directly from the wholesale customer, if it in fact was determined in TelePacific's case, or in any other, that a wholesale provider under-contributed on revenues from special access services used by a reseller to provide stand-alone wireline BIAS offerings. We added that USF contribution pass-throughs are not required by the Commission and that the Commission had not established a mechanism to seek collections directly from entities classified as end users even if such a pass-through was required by contract. In the event that any wholesale provider is found to have under-contributed on special access revenues received from TelePacific (or from any other reseller), the Commission is not authorized to serve as a collections agent for contributors.

² As explained in prior submissions, FCC rules and the guidance provided by the Form 499A instructions do not require certifications on an individual service-order basis. See Coalition Comments at 7 (July 6, 2010); Coalition February 19, 2010 Letter at 4-5.

³ *In re: Universal Service Contribution Methodology; Request for Review of the Decision of the Universal Service Administrator and Emergency Petition for Stay by U.S. TelePacific Corp. d/b/a TelePacific Communications*, 25 FCC Rcd 4652, ¶ 15 (2010) ("*TelePacific Order*") (concluding that the USAC finding regarding T-1 lines was in error under the *Wireline Broadband Order* and citing *Wireline Broadband Order* 20 FCC Rcd at 14860 n.15 & 14862, para. 12 (2005))

⁴ See Coalition Comments at 3-4, 6-9 (July 6, 2010).

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Further, we noted that the ILEC Petitioners' reliance on the *E-Rate Reconsideration Order*⁵ is misplaced because the facts and rules involved (governing USF disbursements) make it inapposite to the issue at hand. The Commission has not determined that TelePacific or a facilities-based CLEC provider of wireline BIAS may not order special access T1s pursuant to a reseller certificate. Nor are we aware that any ILEC or other wholesale provider of such special access T1s has been found to have under-contributed to the USP or that TelePacific or any other reseller was primarily at fault for such under-contribution.

Finally, we discussed the Coalition's prior references to the Commission's *Intercall Order*⁶ and emphasized that ILEC and CLEC pleadings in the docket demonstrate a tremendous degree of ambiguity with respect to the carrier's carrier revenues at issue now pursuant to the *TelePacific Order* and the ILEC Petition. In light of the ambiguities evident and the untold number of factual variations with respect to services ordered, certificates provided and contributions made, if a forthcoming Commission decision requires contributions on revenues from special access T1s used for wireline BIAS, it seems clear that the interests of all parties to this proceeding will be best served by implementation of such a decision on a prospective basis only.

Please feel free to contact the undersigned if you have any questions.

Respectfully submitted,



John J. Heitmann
Counsel for the Coalition

cc: Claudia Fox, Wireline Competition Bureau
Lisa Gelb, Wireline Competition Bureau
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⁵ *In re: Federal-State Joint Board on Universal Service; Changes to the Board of Directors for the National Exchange Carrier Association, Inc.; Schools and Libraries Universal Service Support Mechanism*, 19 FCC Rcd 15252 (2004).

⁶ *See Request For Review by InterCall, Inc. of Decision of Universal Service Administrator*, 23 FCC Rcd 10731, ¶ 24 (June 30, 2008); Coalition February 19, 2010 Letter, at 7.